

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
ELKINS**

AMIN MOHAMMAD,

Petitioner,

v.

**CIVIL ACTION NO. 2:09-CV-71
(MAXWELL)**

JOEL ZIEGLER,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATIONS

On this day, the above-styled matter came before the Court for consideration of the Report and Recommendation of United States Magistrate Judge James E. Seibert. Pursuant to this Court's Local Rules, this action was referred to Magistrate Judge Seibert for submission of a proposed report and a recommendation ("R & R"). Magistrate Judge Seibert filed his R & R on September 15, 2009 [Doc. 6]. In that filing, the magistrate judge recommended that this Court deny the § 2241 petition without prejudice.

Pursuant to 28 U.S.C. § 636 (b) (1) (c), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. ***Thomas v. Arn***, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and the petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); ***Snyder v. Ridenour***, 889 F.2d 1363, 1366 (4th Cir. 1989); ***United States v. Schronce***, 727 F.2d 91, 94 (4th Cir. 1984). Here, objections to Magistrate Judge Seibert's R & R were


due within ten (10) days after being served with a copy of the R & R pursuant to 28 U.S.C. § 636(b)(1) and Fed.R.Civ.P. 72(b). The docket reflects that service was accepted on September 16, 2009. See Doc. 7. To date, neither party has filed objections. Accordingly, this Court will review the report and recommendation for clear error.

Having reviewed the record and the magistrate judge's R & R, it is the opinion of this Court that the recommendations of Magistrate Judge Seibert **[Doc. 6]** should be, and are, hereby **ORDERED ADOPTED**. Accordingly, the Court **DENIES** and **DISMISSES without prejudice** the petitioner's § 2241 Application for Habeas Corpus **[Doc. 1]** with leave to refile his claims as a **Bivens** action . Accordingly, this action is hereby **ORDERED STRICKEN** from the active docket of this Court. As a final matter, this Court hereby **DISQUALIFIES** Mr. Dubyak as counsel for failure to comply with the requirements for admission *pro hac vice*; accordingly, the petitioner is hereby deemed to be representing himself *pro se*.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to all counsel of record and to mail a copy to the *pro se* petitioner.

DATED: February 25, 2010.


JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE